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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUL 12 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Petition for Relief from Unjust and )  
Unreasonable Discrimination in the )  
Deployment of Video Dialtone )  
Facilities )

DA 94-621

RM-8491

and )

Petition for Rulemaking to Adapt )  
the Section 214 Process to the )  
Construction of Video Dialtone )  
Facilities )

AMERITECH'S OPPOSITION TO PETITION FOR RELIEF AND  
PETITION FOR RULEMAKING

Ameritech<sup>1</sup> submits this opposition to the above captioned petitions filed by the Center for Media Education, the Consumer Federation of America, the Office of Communication of the United Church of Christ, the National Association for the Advancement of Colored People, and the National Council of La Raza (collectively "Petitioners") on May 25, 1994.

The Commission should dismiss the petitions for two important reasons. First, the petitions are based on a false premise founded on erroneous facts. In the case of Ameritech, no redlining has occurred nor will any occur in the deployment of video dialtone facilities. Second, and equally important, the petitions are founded on a public policy assumption about the "universal service" status of video dialtone that has not

<sup>1</sup> Ameritech means: Illinois Bell Telephone Company; Indiana Bell Telephone Company, Incorporated; Michigan Bell Telephone Company; The Ohio Bell Telephone Company; and Wisconsin Bell, Inc.

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been established. Whether video dialtone should be given the same universal service status as POTS ("plain old telephone service") has not yet been decided. That decision is a complicated one that should best be addressed, if necessary, in a separate proceeding dealing with universal service in the context of new services, advanced technologies and competition generally. Furthermore, Ameritech believes the issue ultimately would be rendered moot by a widespread market driven deployment of the service. However, there is no need to delay action on the pending video dialtone 214 applications until that larger issue is resolved because there is simply no basis for Petitioners' claim that Ameritech is redlining.

#### **I. THE PETITIONS**

Both petitions charge that local exchange carriers ("LECs") with outstanding video dialtone 214 applications have engaged in economic "redlining" in connection with their video dialtone deployment plans. Specifically, both petitions allege that the LECs are violating section 202 (a) of the Communications Act by intentionally refusing to deploy video dialtone facilities in areas of low income and high minority populations.

The Petition for Relief asks the Commission to issue a policy statement announcing a goal of universal video dialtone service and nondiscriminatory deployment at each phase of construction and an interpretative rule declaring that all video dialtone providers are already required to adhere to universal service objectives and nondiscrimination on the basis of income, race or ethnicity in the deployment of video dialtone, and to instruct its staff to deal specially with applications that do not adhere to those objectives.

In their Petition for Rulemaking, Petitioners ask the Commission to formally amend the rules concerning section 214 applications for video dialtone facilities to

articulate a specific “anti-redlining” provision which would require that service be made available to a proportionate number of low income and minority customers at each phase of deployment. In addition, Petitioners seek a rule change to require applicants to give local public notice of their deployment plans and to hold hearings to discuss the schedule of deployment and disclose the areas to be served and not served.

## II. THE FACTS

For factual support of their claims against Ameritech, Petitioners have selected only certain initial proposed construction areas for only two of the Ameritech states as the basis for their conclusion that the alleged redlining is occurring. The term “redlining” implies that certain communities have been specifically and intentionally excluded based upon pernicious criteria. However, a more impartial view of Ameritech’s proposals demonstrates that all communities within the selected initial construction areas are being included -- i.e., there are no communities arbitrarily excluded within the build areas.

While Petitioners acknowledge and curiously dismiss the inclusion of Harvey, Illinois, as a build area, they ignore other build areas with significant minority populations and median incomes substantially below the region average:

	<u>% Minority</u>	<u>Median Income</u>
Harvey, Illinois	90%	\$29,400
Columbus 29, Ohio	72%	\$13,600
Washington (Cleveland), Ohio	97%	\$27,200
Division (Milwaukee), Wisconsin	71%	\$13,800

In addition, Petitioners' limited focus on "fully affected" municipalities ignores the fact that Ameritech's initial plans include significant portions of other communities with high minority, low income populations.<sup>2</sup>

In fact, Ameritech specified initial build areas that, in total, are very similar to its total service area in terms of racial and ethnic diversity. Ameritech's initial build areas include 15.2% minority population compared to 15.5% for the Ameritech service area as a whole. Moreover, Ameritech has identified initial build areas that include a substantial number of low income customers. In the initial build areas, 35% of the population is below the Ameritech region's median household income of \$36,141.

Moreover, Ameritech's five pending video dialtone applications cover only approximately 1.2 million customer locations of the approximately 6 million locations that Ameritech has announced that it plans to pass with video dialtone facilities by the end of this decade. In that further deployment, Ameritech certainly has no plans to arbitrarily exclude communities with higher proportions of minority or low income households.

Thus, Petitioners' conclusion that Ameritech has "redlined" is simply wrong. Their experts' analysis of selected portions of Ameritech's applications failed to reveal that Ameritech's proposal for the first phase of video dialtone implementation in this region includes significant low income areas and a representative proportion of minority population. Regardless of the data limitations which their experts faced, they

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<sup>2</sup> In addition to the entire build areas noted above, portions of other build areas include wire centers that serve communities with significant minority populations and/or lower median income -- e.g., Elgin, Illinois (22.8%/\$36,992), Indianapolis/Axminster, Indiana (20.3%/\$33,736), Oaklandon, Indiana (17.6%/\$28,391), Redford, Michigan (48%/\$30,928). Minority percentages are based on 1993 demographic estimates. Strategic Mapping, Inc., Santa Clara, California. Minority percentages are the sum of Black, Asian and Hispanic demographic percentages.

reached very troubling -- and very wrong -- conclusions on the basis of incomplete information.

Moreover, Petitioners' statement that "[v]ague promises of future expansion are insufficient to achieve the positive effect of diverse programming" fails to recognize the simple reality that this new network cannot be constructed everywhere at once.

Ameritech has not described its plans in vague terms of future expansion. It has, rather, announced an aggressive deployment plan that is expected to reach 6 million homes in 6 years.

### III. POLICY

The petitions assume that video dialtone service should be treated the same as POTS for public policy purposes.<sup>3</sup> Ameritech submits that this decision has not been made yet, nor should it be made in the pending video dialtone 214 proceedings.

As Ameritech has stated in the context of its Customers First Petition,<sup>4</sup> the best way to assure that advanced technologies are deployed to the most customers in the most efficient manner is to let competition and the market drive the process. If the Commission were to modify the 214 process at all, it should streamline it to facilitate the introduction of new advanced services. Instead, Petitioners would unnecessarily

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<sup>3</sup> Petitioners' claim that access to interactive services is necessary to promote First Amendment free speech values and participation in the democratic process is a dramatic overstatement. One could make the same claim about access to an automobile (especially in rural areas) because it facilitates transportation to polling places and political rallies. It must be remembered that Ameritech's video dialtone platform is being built in addition to -- not as a replacement for -- its telephone network. Moreover, many early applications that will ride the platform are likely to be entertainment-oriented. Lack of access to video dialtone services will not unreasonably interfere with anyone's ability to vote or speak in the Constitutional sense.

<sup>4</sup> See, "Advanced Universal Access," Attachment 4 of 4, filed April 16, 1993, with Supplemental Materials to Ameritech's Petition for Declaratory Ruling and Related Matters to Establish a New Regulatory Model for the Ameritech Region.

lengthen that process and have the Commission virtually direct the manner in which video dialtone facilities are deployed. Petitioners' request, by classifying video dialtone as "universal service," seems to assume away all issues associated with that categorization.

One such issue, of course, is who should pay for the services. Historically, the concept of universal service has implied artificially low rates that are, to a degree, subsidized. Neither Ameritech nor any other LEC requests subsidization of video dialtone services. The effect of a video dialtone undertaking is for the LECs to impose the risk of recouping their investment on their shareholders. If the Commission were to grant the petitions and instead involve itself in directing the deployment of video dialtone services, it would also have to address the issue of compensation if the deployment pattern ceases to be a viable one from a stand alone economic perspective. Moreover, it will have significantly discouraged the LECs from devoting energy to the deployment of the service by significantly increasing the regulatory hurdles to the introduction of the service. All of which may be premature if the market results in a sufficiently widespread deployment of the service on its own.

Moreover, there is certainly not any consensus on the "universal service" status of video dialtone. For example, the subsidization concept inherent in the term "universal service" as it has been applied to POTS is completely at odds with the position traditionally taken by certain other parties that broadband services are not essential, should not be part of regular exchange services, and should be paid for solely by those people that use them.<sup>5</sup> In addition, some might contend that classifying video

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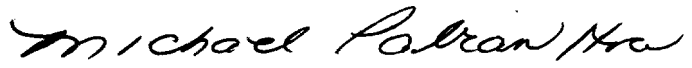
<sup>5</sup> In fact, because video dialtone is a competitive service, Petitioner Consumer Federation of America has argued that the Commission must "ensure that ratepayers do not subsidize the substantial costs of constructing and operating video dialtone facilities." Joint Petition for Rulemaking and Request for Establishment of a Joint Board; Consumer Federation of America and National Cable Television Association, Inc., petitioners; filed April 8, 1993.

dialtone as a universal service is totally inconsistent with the fact that a competitive medium, at least for traditional analog services, is almost universally available. Existing cable systems already pass more than 95% of the homes in this country<sup>6</sup> -- and cable operators currently have franchises covering 99% of the homes in Ameritech's planned build areas.

If the Commission is inclined to consider the "universal service" aspects of video dialtone service in more detail, it should only do so after referring the issue to a separate proceeding that deals with new services and technologies and the concept of universal service generally and all associated issues in the emerging competitive environment. The Commission should not delay the pending video dialtone 214 applications while those larger issues are resolved.

In light of the foregoing, the petitions should be denied.

Respectfully submitted,



Michael S. Pabian  
Attorney for Ameritech  
Room 4H76  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025  
(708) 248-6044

Dated: July 12, 1994

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<sup>6</sup> "Cable Television and America's Telecommunications Infrastructure," National Cable Television Association, April, 1993.

CERTIFICATE OF SERVICE

I, Deborah L. Thrower, do hereby certify that a copy of the foregoing Opposition to Petition for Relief and Petition for Rulemaking has been served on all parties listed on the attached service, list by first class mail, postage prepaid, on this 12th day of July, 1994.

By: Deborah L. Thrower  
Deborah L. Thrower

**CITIZENS COMMUNICATIONS CENTER**

Attn: Angela J. Campbell  
Georgetown University Law Center  
600 New Jersey Avenue, N.W.  
Washington, D.C. 20001

**MEDIA ACCESS PROJECT**

Attn: Andrew Jay Schwartzman  
2000 M Street, N.W.  
Washington, D.C. 20036

**PACIFIC TELESIS**

Attn: Alan F. Ciamporcero  
1275 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D.C. 20004

**US WEST COMMUNICATIONS, INC.**

Attn: James T. Hannon  
Suite 700  
1020 19th Street, N.W.  
Washington, D.C. 20036